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B. Board
9/4/01

Docket No.: 5244-0051-2X DIV

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF: :

Tetsuro MOTOYAMA : GROUP ART UNIT: 2152

SERIAL NO: 08/738,659 :

FILED: OCTOBER 30, 1996 : EXAMINER: LUU, L.

2nd CPA FILED: MAY 11, 2001

FOR: METHOD AND SYSTEM FOR TRANSMITTING INFORMATION FROM SENSORS USING ELECTRONIC MAIL

APPEAL BRIEF

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

SIR:

This is an appeal from the decision of the Examiner mailed July 30, 2001, in rejecting Claims 10, 12-19, 36, 38-44, 52-61, and 68-87 in the above-identified application.

I. REAL PARTY IN INTEREST

The real parties in interest of the above-identified application are the assignees of this application, Ricoh Company, Ltd. and Ricoh Corporation.

II. RELATED APPEALS AND INTERFERENCES

U.S. Patent Application No. 08/738,461 filed October 30, 1996 (Atty. Doc. 5244-0052-2X DIV) has the same parent application as the present application and is concurrently being appealed with the appeal of this application. Although the claims of this

related application have been determined to be independent and distinct from the claims of the present application by virtue of the Examiner's restriction requirement, the claims are none-the-less related to a certain extent and have been rejected using common references. There are no known other appeals or interferences which will directly affect, be directed affected by, or have a bearing on the Board of Appeals decision in the present appeal.

III. STATUS OF CLAIMS

The rejection of every pending claim including Claims 10, 12-19, 36, 38-44, 52-61, and 68-87 is being appealed. There are no claims in this application which have been allowed or indicated as containing allowable subject matter, and each of the claims which was pending at one time in this application which is not being appealed has been cancelled during the course of prosecuting this application.

IV. STATUS OF AMENDMENTS

The last amendment filed in this application before the preparation of this appeal brief was the preliminary amendment of May 11, 2001. As this amendment was filed when the application was not under a Final Office Action, this amendment has been entered into the application. During the preparation of this appeal brief, it was noticed that there is an issue regarding the clarity of claim 54. In order to clarify the language of this claim, it has been amended by a separate amendment submitted concurrently herewith. It is assumed that this amendment will be entered as the application is not under a final rejection. Thus, the claims set forth in the attached Appendix include the newly amended form of claim 54.

V. SUMMARY OF THE INVENTION

The present invention is directed towards a method and system for communicating, using electronic mail between a monitored device and a monitoring device. The monitored device is generically recited in the independent claims but the specific implementation recited in the specification, which is not to be used to improperly limit the claims including the independent claims is a business office device as recited in Claims 12 and 38. Specific implementations of the business office device include a copier, a digital copier, a facsimile machine, a scanner, a printer, a facsimile server, or other business office machine which would include, for example, a postage stamp or metering device. See e.g., page 14, lines 16-20 of the specification, and element 24, 28, and 32 of Figure 1, for example.

The independent claims recite the utilization of status information determined using sensors. The specification discloses the use of many different types of sensors found in business office devices (or other devices) and such sensors are described in the specification throughout pages 12-15. It is to be noted that the sensors of the present invention are not limited to the sensors used in a business office machine but may be any type of sensors including the sensors found in "a metering system including a gas, water, or electricity metering system, vending machines, or any other device which performs mechanical operations, has a need to be monitored, and performs a function." See page 14, lines 20-26.

Figure 11 illustrates one of the processes of the invention in which the monitored device transmits information such as density information to the monitoring device. The description of Figure 10 is set forth in the specification at page 20, line 23 - page 22, line 2. Claim 10 specifically recites that the monitoring device requests a status of the monitored device using sensors. This request for status is transmitted using electronic mail. Page 21, line 14 - page 22,

line 2 describes how the monitoring device transmits using a connectionless-mode of communication and the specification at page 18, lines 8-22 describes how a connectionless-mode of communication may be implemented using e-mail.

Claims 18 and 44 of Group II describe the use of a connection-mode of communication when the status information is outside of the normal operating parameters. This feature of the invention is supported by the specification at lines 13-26 of page 19.

VI. ISSUES

The only issue in this appeal is whether each of the pending claims including Claims 10, 12-19, 36, 38-44, 52-61, and 68-87 are unpatentable under 35 U.S.C. §103 over Kraslavsky et al in view of Cohn et al.

VII. GROUPING OF CLAIMS

The pending claims fall within three groups as follows:

Group	Claims
Group I	Independent Claims 10, 16, 36, and 42, and all claims depending therefrom[1]
Group II	Claims 18 and 44
Group III	Claims 72-87

[1] This group includes all pending claims (Claims 10, 12-19, 36, 38-44, 52-61, and 68-87).

VIII. ARGUMENT

A. Argument With Respect to Group I

1. Summary of Argument

Each of the independent claims of this application has been rejected under 35 U.S.C. §103 using the combination of Kraslavsky et al (U.S. Patent No. 5,537,626) in view of Cohn et al (U.S. Patent No. 5,740,231). The primary basis for the appeal of the Examiner's rejection is that, contrary to the Examiner's hindsight assertion, one of ordinary skill in the art would not have any motivation to modify the primary reference of Kraslavsky et al to operate using the concept of electronic mail which is disclosed in the secondary reference to Cohn et al. Moreover, even if the two patents could be combined, the resulting combination would not achieve the claimed invention.

Despite approximately seven official actions or PTO responses, and corresponding responses and interviews from Applicant's Attorney, nothing has been able to persuade the examiner that there is any allowable subject matter in this application. In order to present substantial evidence of patentability to the Examiner, two declarations under 37 CFR 1.132 have been previously submitted to show the nonobviousness of the invention. Moreover, even though well organized arguments and evidence have been presented, especially in the Amendment filed May 11, 2001, the Examiner has not provided specific responses to the queries which have been made, or any real explanation as to why the declarations are insufficient; all that has been provided is a repeat of the same old rejection, and a bald assertion that the declarations "have been fully considered but are not deemed to be persuasive as discussed above." Official Action of July 30, 2001 at p. 10. However, a review of the official

action reveals that there has been no explanation whatsoever of why the information set forth in the declarations is not persuasive.

The arguments previously made during the prosecution of this application and all parent and related applications are hereby expressly withdrawn. As these arguments were not used or relied on by the Examiner to allow any claims, the Board is requested not to rely on the previous arguments, and the public should not rely on any arguments which were previously made for purposes of claim interpretation or to show prosecution history estoppel. Instead, all that should be considered as having been used for obtaining allowance of the claims is (1) the language of the claims themselves, (2) the arguments made during this appeal, and (3) the two declarations which have been submitted under 37 CFR 1.132.[2]

2. The Outstanding Rejection

Kraslavsky et al disclose a printer system in which the printer can transmit status data over a Local Area Network ("LAN"). Reading the Background of the Invention section of Kraslavsky et al, it is evident that the purpose of Kraslavsky et al is to enable a printer to transmit sufficient amounts of data to a LAN to enable the printer to be an effective and intelligent member of the network. The printer in Kraslavsky et al preferably communicates utilizing an Ethernet network. See e.g., column 9, lines 55-67 and line 34. The software utilized to control the communications over the network is preferably Novell NetWare. See e.g., column 11, lines 1-18. Additionally, the invention of Kraslavsky et al may also be implemented using Unix software. See column 4, lines 36-42.

It is further evident that in Kraslavsky et al there is a desire to have a high-speed

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[2]Of course, the claims should also be interpreted in light of the specification, although no limitations should be improperly read into the claims.

response or a near real-time response when determining status and control information. For example, column 14, lines 37-48 disclose the transmission of information such as the online/offline status and the time and date of the printer which are highly relevant in real-time or near-real-time status, and could be considered useless if transmitted after a delay.

Cohn et al merely disclose a system of transmitting messages between human users including using electronic mail.

The outstanding Office Action asserts that it would have been obvious to modify the system of Kraslavsky et al which uses Novell NetWare to communicate messages so that there is communication of these messages using e-mail as disclosed in Cohn et al "because it would allow the message to be transferred globally between any devices." See the last paragraph of page 3 of the outstanding Office Action. However, as explained below, this motivation provided by the Examiner is not a reasonable motivation nor would it be sufficient motivation for one of ordinary skill in the art to combine the e-mail disclosed in Cohn et al with the system of Kraslavsky et al to achieve the invention presently recited in the claims.

3. Specific Arguments for Group I

Initially, it is noted that Banno et al (U.S.P. 4,876,606) has been cited by the Examiner as showing a particular feature of the invention.[3] However, there is no explanation as to how Banno et al can be combined with Kraslavsky et al and Cohn et al nor any motivation provided relating to such a combination. Moreover, Banno et al is not listed in ¶3 on p.2 of the Office Action as part of the 35 USC § 103 rejection. Accordingly, it does not appear as if Banno et al is formally utilized in the outstanding rejection and is therefore not further addressed.

[3] See the top paragraph of p. 3 of the outstanding office action.

While the claims have been grouped in this appeal as required by PTO procedures, the limiting of the groups to three should not in any way be construed as an admission that the dependent claims do not have separate patentability or are unpatentable by themselves, or that any claims have the same scope. The grouping of the claims has been performed based on the prior art used by the Examiner to reject the claims.

(a) EMAIL IS TOO SLOW AND NOT INTERACTIVE ENOUGH TO BE UTILIZED IN THE SYSTEM OF KRASLAVSKY ET AL.

As explained in the Tolsdorf, Jr. Declaration submitted on May 11, 2001 which is incorporated herein by reference, interactivity and fast bi-directional communication between a printer and a controlling computer is important and essential to the invention of Kraslavsky et al.[4] This is a clear and undisputable feature of Kraslavsky et al.

Back in June of 1995, one of ordinary skill in the art would not think to modify Kraslavsky et al to utilize an email format, as disclosed in Cohn et al because the interactivity and rapid communication features of Kraslavsky et al may be lost, and no feature which is not already present in Kraslavsky et al would be obtained. Please see further comments in the Tolsdorf, Jr. Declaration with regard to this feature.

In the Preliminary Amendment filed on May 11, 2001, it was requested in the first full paragraph of p. 12 for the Examiner to explain how it is obvious and permissible to destroy the important and essential feature of Kraslavsky et al pertaining to the interactivity and bi-directional rapid communication through the use of email or Internet electronic mail. No response of any type was provided by the Examiner on this point. Why? Because a well

[4]A review of the Tolsdorf, Jr. declaration shows extensive experience with computers and email.

reasoned response is not possible as an essential feature of Kraslavsky et al would be destroyed by its use of electronic mail communication.

(b) COHN ET AL TEACH THE USE OF INTERNET EMAIL FORMAT WHEN THERE IS A PROBLEM WITH DIVERSE COMMUNICATION PROTOCOLS AND FORMATS: KRASLAVSKY ET AL DO NOT USE DIVERSE PROTOCOLS AND FORMATS

Cohn et al use different formats for various types of messages such as video, email, text, voice, etc. Because of the use of these different formats, all messages are encapsulated in a standard message wrapper to form a message for transport and storage within the communication system. See Cohn et al at col. 16, lines 11-17. However, because Kraslavsky et al relate only to a printing system and printers only need to receive information to be printed in a single format, no one of ordinary skill would look at the teachings of Cohn et al related to the standard message wrapper, and apply such teachings to Kraslavsky et al, because Kraslavsky et al do not have diverse types of communication protocols or messages. The independent expert Tolsdorf, Jr., as set forth in the Tolsdorf, Jr. Declaration, also supports this conclusion.

Based on at least the reasons set forth in this section, one of ordinary skill in the art would not modify Kraslavsky et al based on what is taught in Cohn et al. It was requested that the examiner respond to this argument on the top of p. 13 of the Amendment filed May 11, 2001. However, the examiner did not address this argument in his office action.

(c) **THE EXAMINER'S RATIONALE FOR MODIFYING KRASLAVSKY ET AL TO ALLOW THE GLOBAL TRANSFER OF MESSAGES IS INSUFFICIENT**

The outstanding Office Action explains that the motivation for modifying Kraslavsky et al to use an Internet electronic mail message format as disclosed in Cohn et al is "because it would allow the message to be transferred globally between any devices (devices that are taught in Kraslavsky and Cohn's references)." Kraslavsky et al is only concerned with monitoring and control of a printer. There is no need to deal with any other machine. How or why the various devices of Cohn et al could or would be incorporated into the system of Kraslavsky et al is a complete mystery; there is no explanation whatsoever in the outstanding office action as to how or why the devices of Cohn et al could or would be incorporated into Kraslavsky et al. Cohn et al disclose varying devices such as (1) voicemail systems, (2) electronic mail systems (3) facsimile transmission systems, and (4) video transmission systems. See Cohn et al at col. 8, lines 39-41. The examiner fails to disclose why or how such devices would be incorporated into Kraslavsky et al.

Moreover, Kraslavsky et al uses a SCSI device and indicates that the system can serve additional printers and peripherals. Kraslavsky et al at column 8, lines 4-8. Thus, Kraslavsky et al is capable of performing all desired communications using the SCSI communication format, and global communication between the peripherals and the computer can already occur.

As stated in the Tolsdorf, Jr. Declaration, it is the opinion of Mr. Tolsdorf that the Examiner's motivation to allow the message to be transferred globally is not an issue or problem and it is unclear what this statement of motivation means. As there is no motivation or need or desire to combine Cohn et al with Kraslavsky et al, the obviousness rejection must fail.

It is noted that in the Amendment of May 11, 2001, it was requested that an explanation of this global communication be provided. See pp. 13-14 for the request for clarification. No clarification was provided by the Examiner.

(d) IT IS NOT CLEAR FROM THE OFFICE ACTION HOW THE COMBINED SYSTEM OF KRASLAVSKY ET AL AND COHN ET AL WOULD OPERATE

Cohn et al teach the use of a standard message wrapper which encapsulates ***all*** received messages with the standard message wrapper. Cohn et al at col. 16, lines 12-18. Thus, if the teachings of the message format disclosed in Cohn et al were applied to the system of Kraslavsky et al, ***all*** communication between the printer and a controlling computer would have an Internet electronic mail message format.

As explained in the Tolsdorf, Jr. Declaration, such a system does not make sense and would not be obtained or constructed by one of ordinary skill in the art. If all messages to the printer in Kraslavsky et al were constructed in accordance with the common wrapper, the resulting system would transmit all data including the print jobs and data to be printed using such an electronic mail format. Tolsdorf, Jr. explains that it would not have been practical or obvious to transmit all communications in Kraslavsky et al to the printer. However, this is what is taught in and required by Cohn et al.

If the resulting system of the Cohn et al and Kraslavsky et al patents does not encapsulate all information including the print information in a common wrapper, then how would the resulting system operate? This question was posed to the examiner at the middle of p. 15 of the Amendment of May 11, 2001. However, the examiner never responded to this question.

(e) **LONG-FELT BUT UNRESOLVED NEED**

Submitted with the Amendment of May 11, 2001 was a second Declaration by under 37 C.F.R. §1.132 by Motoyama which demonstrates a long-felt but unresolved need based on objective facts which cannot be ignored. However, the Examiner has provided no explanation as to why the long-felt but unresolved need is not persuasive. The facts set forth in the declaration show over an extended period of time that there were numerous attempts to provide the most inexpensive remote diagnostic system. The Declaration also explains, based on the inventor's experience, that the use of telephone lines does not solve the long-felt need because of the extra cost associated with using telephone lines. Moreover, the Declaration explains that the individual components of the claims were available at the time in which the original application was filed (June of 1995).

It is firmly asserted that a proper prima facie case of obviousness of the claims does not exist. However, is such a case is determined by the Board to exist, such a case is a weak one, and would be overcome by at least the Motoyama declaration, if not both the Motoyama and Tolsdorf, Jr. declarations.

B. Specific Arguments for Group II

The invention(s) of Claims 18 and 44 recites the concept of using a connection-mode message when the status information is outside of the normal operating parameters. The outstanding Office Action indicates that his feature is disclosed in ***both*** Cohn et al and Kraslavsky et al. However, a review of these patents and the specific portions cited by the Examiner reveals that these two patents do not disclose or suggest a combination which include what is recited in Claims 18 or 44. Neither reference discloses or suggests using Internet electronic mail when information which has been analyzed is within a standard operating range,

and using a connection-mode message when the status information is outside of normal operating parameters. In addition to these two patents not disclosing the features recited in Claims 18 and 44, there is no explanation provided by the Examiner as to how these references can be modified to result in the invention of claims 18 and 44.

C. Specific Arguments for Group III

It is believed that the Motoyama declaration pertaining to long felt but unresolved need is applicable to all claims which utilize electronic mail (e.g., every pending claim of the application). However, should it be determined by the Board that the long felt but unresolved need declaration is only applicable to claims which communicate the email using a local area network and systems which do not use a telephone line, then at least the claims of Group III (e.g., claims 72-87) are patentable in view of the Motoyama declaration.

IX. SUMMARY

For the foregoing reasons, it is submitted that the rejection of each of the pending claims under 35 U.S.C. §103 as being unpatentable over Kraslavsky et al in view of Cohn et al

is erroneous and a reversal of the rejection set forth by the outstanding Office Action is respectfully requested.

Respectfully submitted,

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APPENDIX

Pending Claims of SN 08/738,659

10. A method for communicating between a monitored device and a monitoring device, comprising the steps of:

determining information to be transmitted by the monitoring device to the monitored device, the information including a request for a status of the monitored device determined using sensors within the monitored device; and

transmitting the information through electronic mail from the monitoring device to the monitored device.

12. A method according to claim 68, wherein the step of transmitting the information from the monitoring device comprises:

transmitting the information to the monitored device which is a business office device.

13. A method according to claim 12, wherein the step of transmitting the information to the monitoring device comprises:

transmitting the information to one of a copier, a facsimile machine, and a printer.

14. A method according to claim 68, further comprising the steps of:

receiving the transmitted information by the monitored device; and

transmitting, through the Internet, an Internet electronic mail message from the monitored device to the monitoring device containing status information of the monitored device, in response to the transmitted information from the monitoring device.

15. A method according to claim 68, wherein the transmitting step comprises:

transmitting the information from the monitoring device to a plurality of monitored devices including the monitored device.

16. A method for communicating between a machine and a monitoring device, comprising the steps of:

determining status information using at least one of a mechanical and electrical sensor; and

transmitting an electronic mail message from the machine to the monitoring device containing the status information.

17. A method according to claim 69, further comprising the step of:

analyzing the status information by the machine,

wherein the status information is transmitted in the Internet electronic mail message from the machine when the status information is analyzed and determined to be within a standard operating range.

18. A method according to claim 17, further comprising the steps of:

determining status information which is outside of normal operating parameters exists in the machine using at least one of the mechanical and electrical sensor; and

transmitting a connection-mode message from the machine to the monitoring device containing the status information which is outside of the normal operating parameters.

19. A method according to claim 17, wherein the step of transmitting from the machine to the monitoring device comprises:

transmitting, through the Internet, the Internet electronic mail message from the machine which is a device selected from the group consisting of a copier, a facsimile machine, and a printer, to the monitoring device.

36. A system for communicating between a monitored device and a monitoring device, comprising:

means for determining information to be transmitted by the monitoring device to the monitored device, the information including a request for a status of the monitored device determined using sensors within the monitored device; and

a transmitter of the monitoring device which transmits the information through electronic mail from the monitoring device to the monitored device.

38. A system according to claim 70, wherein the monitored device is a business office device.

39. A system according to claim 38, wherein the business office device is one of a copier, a facsimile machine, and a printer.

40. A system according to claim 70, wherein the monitored device further comprises:

a receiver which receives the transmitted information; and

a transmitter which transmits, through the Internet, an Internet electronic mail message from the monitored device to the monitoring device containing status information of the monitored device, in response to the transmitted information from the monitoring device.

41. A system according to claim 70, wherein the transmitter of the monitoring device comprises:

a transmitter which transmits the information from the monitoring device to a plurality of monitored devices including the monitored device.

42. A system for communicating between a machine and a monitoring device, comprising:

sensors within the machine which sense status information to be transmitted to the monitoring device; and

a transmitter of the machine which transmits the status information using an electronic mail message from the machine to the monitoring device.

43. A system according to claim 71, further comprising:

means for analyzing the status information by the machine,

wherein the status information is transmitted using the transmitter of the machine when the status information is analyzed and determined to be within a standard operating range.

44. A system according to claim 43, further comprising:

means for determining status information which is outside of normal operating parameters exists in the machine using said sensors; and

a transmitter configured to transmit a connection-mode message from the machine to the monitoring device containing the status information which is outside of the normal operating parameters.

52. A method according to claim 68, wherein the transmitting step comprises:

transmitting the Internet electronic mail message which includes an identifier followed by an "@" symbol followed by a domain name.

53. A method according to claim 52, wherein the transmitting step further comprises:

transmitting the Internet electronic mail message which includes a description of an encoding type of the Internet electronic mail message.

54. A method according to claim 10, wherein the transmitting step comprises:

transmitting said electronic mail as an Internet electronic mail message through a firewall of a network which includes the monitored device.

55. A method according to claim 54, wherein the transmitting step further comprises:

transmitting said Internet electronic mail message which includes an identifier followed by an "@" symbol followed by a domain name.

56. A method according to claim 55, wherein the transmitting step further comprises:

transmitting said Internet electronic mail message which includes a description of an encoding type of the Internet electronic mail message.

57. A system according to claim 70, wherein the transmitter comprises:

a device configured to transmit said Internet electronic mail message to include an identifier followed by an "@" symbol followed by a domain name.

58. A system according to claim 57, wherein the transmitter further comprises:

a device configured to transmit said Internet electronic mail message to include a description of an encoding type of the Internet electronic mail message.

59. A system according to claim 70, wherein the transmitter comprises:

a device configured to transmit said Internet electronic mail message through a firewall of a network which includes the monitored device.

60. A system according to claim 59, wherein the transmitter further comprises:

a device configured to transmit said Internet electronic mail message to include an identifier followed by an "@" symbol followed by a domain name.

61. A system according to claim 60, wherein the transmitter further comprises:

a device configured to transmit said Internet electronic mail message to include a description of an encoding type of the Internet electronic mail message.

68. A method according to claim 10, wherein said step of transmitting comprises:

transmitting the information through an Internet electronic mail message over the Internet from the monitoring device to the monitored device.

69. A method according to claim 16, wherein said step of transmitting comprises:

transmitting the information using an Internet electronic mail message through the Internet from the machine to the monitoring device.

70. A system according to claim 36, wherein the transmitter comprises:

a device configured to transmit the electronic mail message and information, using the Internet, as Internet electronic mail from the monitoring device to the monitored device.

71. A system according to claim 42, wherein the transmitter comprises:

a device configured to transmit the information and electronic mail message, using the Internet, as an Internet electronic mail message from the monitoring device to the monitored device.

72. A method according to claim 68, wherein the transmitting step comprises:

transmitting the Internet electronic mail message through a Local Area Network ("LAN").

73. A method according to claim 72, wherein the transmitting step comprises:

transmitting the Internet electronic mail message without using a telephone line.

74. A method according to claim 10, wherein the transmitting step comprises:

transmitting the electronic mail message without using a telephone line.

75. A method according to claim 68, wherein the transmitting step comprises:

transmitting the Internet electronic mail message without using a telephone line.

76. A method according to claim 69, wherein the transmitting step comprises:

transmitting the Internet electronic mail message through a Local Area Network ("LAN").

77. A method according to claim 76, wherein the transmitting step comprises:

transmitting the Internet electronic mail message without using a telephone line.

78. A method according to claim 16, wherein the transmitting step comprises:

transmitting the electronic mail message without using a telephone line.

79. A method according to claim 69, wherein the transmitting step comprises:

transmitting the Internet electronic mail message without using a telephone line.

80. A system according to claim 70, wherein the transmitter comprises:

means for transmitting the Internet electronic mail message through a Local Area Network ("LAN").

81. A system according to claim 80, wherein the transmitter comprises:

means for transmitting the Internet electronic mail message without using a telephone line.

82. A system according to claim 36, wherein the transmitter comprises:

means for transmitting the electronic mail message without using a telephone line.

83. A system according to claim 70, wherein the transmitter comprises:

means for transmitting the Internet electronic mail message without using a telephone line.

84. A system according to claim 71, wherein the transmitter comprises:

means for transmitting the Internet electronic mail message through a Local Area Network ("LAN").

85. A system according to claim 84, wherein the transmitter comprises:

means for transmitting the Internet electronic mail message without using a telephone line.

86. A system according to claim 42, wherein the transmitter comprises:

means for transmitting the electronic mail message without using a telephone line.

87. A system according to claim 71, wherein the transmitter comprises:

means for transmitting the Internet electronic mail message without using a telephone line.